

Message Text

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TO AMEMBASSY BUENOS AIRES

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E;A. 11652

TAGS: AR EIND

SUBJ: PARKE DAVIS AND COMPANY CASE IN ARGENTINA SUPREME
COURT

REF : BUENOS AIRES 6655

1. "BUSINESS LATIN AMERICA" DATED AUGUST 23, 1973 CAR-
RIES A LEAD ARTICLE ON ARGENTINA SUPREME COURT DECISION ON
THE PARKE DAVIS AND COMPANY CASE.

2. ACCORDING TO THE ARTICLE, THE COURT RULED THAT A SUB-
SIDIARY CORPORATION AND ITS CONTROLLING PARENT FORM A
SINGLE ENTITY AND HAVE A SINGLE COMMUNITY OF INTERESTS
THAT MAKES IMPOSSIBLE ANY CONTRACT BETWEEN THEM. HENCE,
FOR TAX PURPOSES, CONTRACTS FOR THE TRANSFER OF TECH-

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NOLOGY AND ROYALTY PAYMENTS BETWEEN AN AFFILIATE AND ITS
PARENT FORM PART OF THE INVESTED CAPITAL OF THE FIRM.

UNDER THIS CONCEPT, THE ROYALTY PAYMENTS BY A MAJORITY-OWNED SUBSIDIARY TO ITS PARENT ARE THEREFORE NOT TAX DEDUCTIBLE EXPENSES. WHILE THE NARROW HOLDING IN THIS CASE WOULD APPLY ONLY TO TAX DEDUCTIONS FOR ROYALTY PAYMENTS, THE BROAD HOLDING, WITH ITS THEORY OF "CONJUNTO ECONOMICO", SEEMS TO BE CONSISTENT WITH THE SAME COURT'S DECISION IN THE SWIFT DE LA PLATA CASE REPORTED IN REFTEL.

ARGENTINA SUPREME COURT THEREFORE SEEMS TO BE REDEFINING THE TRADITIONAL CONCEPT OF THE CORPORATION AS A LEGAL ENTITY. THIS COULD CONCEIVABLY HAVE A MORE SIGNIFICANT IMPACT ON FOREIGN INVESTMENT CLIMATE IN ARGENTINA THAN PROPOSED INVESTMENT CODE.

3. IN LIGHT OF ABOVE DECISIONS, DEPARTMENT WOULD APPRECIATE ANY INFORMATION EMBASSY MAY HAVE ON THE PARKE DAVIS AND COMPANY CASE AND ITS ANALYSIS OF IMPLICATIONS THESE RECENT DECISIONS WILL HAVE FOR US AND OTHER FOREIGN-OWNED FIRMS NOW IN ARGENTINA. RUSH

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